

**ASSEMBLY BILL**

**No. 1713**

**Introduced by Committee on Judiciary (Corbett (Chair), Dutra, Hancock, Jackson, Laird, Longville, Montanez, Steinberg, and Vargas)**

February 26, 2003

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An act to amend Section 1280 of, and to add Sections 1281.84 and 1287.1 to, the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

AB 1713, as introduced, Committee on Judiciary. Consumer arbitration agreements.

(1) Existing law provides for the enforcement of arbitration agreements and requires a court to vacate an arbitration award in specified circumstances.

This bill would define attorney for a party, consumer arbitration, consumer party, and private arbitration company, and expand the definition of neutral arbitration for these purposes, as specified.

(2) Existing law permits consumers to contract to arbitrate and regulates the conduct of arbitrations.

This bill would provide that a private arbitration company or self-regulatory organization (SRO) that administers a consumer arbitration in violation of specified provisions of law shall, in the court's discretion, be subject to disgorgement of any administrative fee obtained as a result of that violation.

(3) Existing law requires a court to vacate an arbitration award under specified circumstances.

This bill would prohibit an arbitrator or private arbitration company involved in a consumer arbitration from conducting or administering

further arbitration of the dispute if a court vacates the award, unless the consumer party elects otherwise in writing prior to any rearbitration of the matter.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1280 of the Code of Civil Procedure is  
2 amended to read:  
3 1280. As used in this title:  
4 (a) “Agreement” includes, but is not limited to, agreements  
5 providing for valuations, appraisals and similar proceedings and  
6 agreements between employers and employees or between their  
7 respective representatives.  
8 (b) “Attorney for a party” *includes any attorney actually*  
9 *representing a party and any attorney present at the arbitration*  
10 *hearing or who is identified in any arbitration brief or other paper*  
11 *submitted to the arbitrator as representing a party for purposes of*  
12 *the arbitration.*  
13 (c) “Award” includes, but is not limited to, an award made  
14 pursuant to an agreement not in writing.  
15 ~~(e)~~  
16 (d) “Consumer arbitration” *means an arbitration that is*  
17 *binding on the consumer and conducted under a predispute*  
18 *arbitration provision contained in a contract that meets both of the*  
19 *following criteria:*  
20 (1) *The contract is with a consumer party.*  
21 (2) *The arbitration provision is contained in a printed form*  
22 *agreement or was drafted by or on behalf of, or inserted by or on*  
23 *behalf of, the nonconsumer party.*  
24 (e) “Consumer party” *means a party to a consumer arbitration*  
25 *agreement who, for the purpose of that agreement, is any of the*  
26 *following:*  
27 (1) *An individual who seeks or acquires, including by purchase,*  
28 *lease, or license, any goods or services primarily for personal,*  
29 *family, or household purposes, including financial services,*  
30 *insurance, and other goods and services, as defined in Section*  
31 *1761 of the Civil Code.*



1 (2) *An individual who is an enrollee, a subscriber, or an insured*  
2 *under a health care service plan, within the meaning of Section*  
3 *1345 of the Health and Safety Code, or a health care insurance*  
4 *plan, within the meaning of Section 106 of the Insurance Code.*

5 (3) *An individual with a medical malpractice claim that is*  
6 *subject to arbitration pursuant to a predispute arbitration*  
7 *agreement.*

8 (4) *An employee or applicant for employment in a dispute*  
9 *arising out of, or relating to, his or her employment or prospective*  
10 *employment, except a dispute under or arising out of a collective*  
11 *bargaining agreement between an employer and its employees or*  
12 *between their respective representatives.*

13 (f) “Controversy” means any question arising between parties  
14 to an agreement whether ~~such~~ the question is one of law ~~or~~, of fact,  
15 or both.

16 ~~(d)~~  
17 (g) “Neutral arbitrator” means an arbitrator who is  
18 ~~(1) selected jointly~~ selected or appointed by one of the following  
19 methods:

20 (1) *Jointly by the parties or by the arbitrators selected by the*  
21 *parties or* ~~(2) appointed by.~~

22 (2) *By the court when the parties or the arbitrators selected by*  
23 *the parties fail to select an arbitrator who was to be selected jointly*  
24 *by them.*

25 ~~(e)~~  
26 (3) *By a private arbitration company, under an agreement of*  
27 *the parties or applicable rules.*

28 (h) “Party to the arbitration” means a party to the arbitration  
29 agreement *who does either of the following:*

30 (1) ~~Who seeks~~ *Seeks to arbitrate a controversy pursuant to the*  
31 *agreement;*

32 ~~(2) Against~~ *against whom* ~~such~~ the arbitration is sought  
33 ~~pursuant to the agreement; or~~

34 ~~(3) Who is.~~

35 (2) *Is made a party to* ~~such~~ the arbitration by order of the neutral  
36 arbitrator upon ~~such~~ the party’s application, upon the application  
37 of any other party to the arbitration, or upon the neutral arbitrator’s  
38 own determination.

39 ~~(f)~~

1 (i) “Private arbitration company” means any  
2 nongovernmental entity or individual that holds itself out as  
3 managing, coordinating, or administering arbitrations, or  
4 providing the services of neutral arbitrators, or making referrals  
5 or appointments to, or providing lists of, neutral arbitrators.  
6 “Private arbitration company” includes any entity owned, in  
7 whole or in part, by any individual, or affiliated with a private  
8 arbitration company, but does not include individuals appointed  
9 to serve as the arbitrator, entities that administer, make referrals  
10 or appointments to, or provide lists of arbitrators in, fewer than  
11 five consumer arbitration cases per year, or any self-regulatory  
12 organization (SRO) as defined in the federal Securities and  
13 Exchange Act of 1934 (15 U.S.C. Sec. 78c(a)(26)) or the federal  
14 Commodity Exchange Act (7 U.S.C. Sec. 1 et seq.) and regulations  
15 adopted in implementation of those acts.

16 (j) “Written agreement” shall be deemed to include a written  
17 agreement which has been extended or renewed by an oral or  
18 implied agreement.

19 SEC. 2. Section 1281.84 is added to the Code of Civil  
20 Procedure, to read:

21 1281.84. Any private arbitration company or self-regulatory  
22 organization (SRO) that administers a consumer arbitration in  
23 violation of Section 1281.6, 1281.92, 1284.3, or 1287.1, shall be  
24 subject, at the discretion of the court, to disgorgement of any  
25 administrative fee obtained as a result of the violation of these  
26 sections.

27 SEC. 3. Section 1287.1 is added to the Code of Civil  
28 Procedure, to read:

29 1287.1. If a court vacates an award in a consumer arbitration,  
30 an arbitrator or private arbitration company involved in the  
31 arbitration may not conduct or administer any further arbitration  
32 of the dispute, unless the consumer party so elects in writing prior  
33 to any re-arbitration of the matter.